

**CONTRACT BETWEEN THE
HEALTH & HUMAN SERVICES COMMISSION
AND
LA ESPERANZA CLINIC
FOR
COMMUNITY-BASED OUTREACH SERVICES
TO THE
CHILDREN’S HEALTH INSURANCE PROGRAM**

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STATE OF TEXAS

COUNTY OF TRAVIS

**CONTRACT BETWEEN THE
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THIS CONTRACT (the "Contract") is entered into between the HEALTH AND HUMAN SERVICES COMMISSION ("HHSC"), an administrative agency within the executive department of the State of Texas with its central office at 4900 North Lamar Boulevard, Austin Texas, and La Esperanza Clinic, a non-profit corporation having an office at 1610 South Chadbourne, San Angelo, Texas ("CONTRACTOR"), for the purpose of assisting with community-based outreach in connection with the Children's Health Insurance Program ("CHIP"). HHSC and CONTRACTOR may be referred to in this agreement individually as a "Party" or collectively as the "Parties."

The Parties agree that the following terms and conditions shall apply to the services and deliverables to be provided by CONTRACTOR under this Contract in consideration of funds to be provided by HHSC.

Article 1. Background and Objectives

Section 1.01 Background.

(a) Availability of low-cost health insurance in Texas.

Approximately 1.4 million children in Texas are uninsured. The costs, both economic and social, to the State of Texas are immeasurable. In recognition of this need, the 76th Texas Legislature authorized the state's participation in Title XXI of the federal Social Security Act, which authorizes state children's health insurance programs. Title XXI is an optional joint state-federal program designed to provide affordable insurance to low-income families with uninsured children.

(b) State enabling legislation.

The state enabling legislation, [Senate Bill 445](#), is codified as Chapter 62, Health & Safety Code. The principal objective of the state legislation is to provide primary and preventative health care to low-income, uninsured children of Texas, including children with special health care needs, who are not served by or eligible for other state-assisted health insurance programs. The legislation also directs HHSC to conduct a community outreach campaign to enhance public awareness about the availability of benefits under CHIP.

(c) Community-based outreach.

To ensure that families of uninsured children who are eligible for CHIP learn about the program in an effective manner, HHSC believes that outreach must be provided in a manner that is culturally competent and locally appropriate, recognizing the state's diversity and breadth. This outreach is best provided by organizations within local communities that have gained the respect and trust of families with uninsured children.

(d) Procurement of community-based outreach services.

[Chapter 62](#), Health & Safety Code, authorizes HHSC to contract with community-based organizations ("CBOs") to implement a community outreach campaign for CHIP. To meet the need for community-based outreach

services, HHSC published a [Request for Proposal](#) (“[RFP](#)”) to obtain outreach proposals from established CBOs and coalitions of CBOs. CONTRACTOR’s responded to the RFP with a proposal (the “[Proposal](#)”) for implementing a community outreach program of its design. Following evaluation of proposals submitted statewide, CONTRACTOR’s Proposal was selected as one of several proposals representing best value for the state. HHSC desires to implement CONTRACTOR’s Proposal, as submitted or as modified and which is attached as [Exhibit A](#) to this Contract, through this agreement.

Section 1.02 HHSC’s objectives.

(a) *Objectives.*

HHSC has engaged CONTRACTOR for the purpose of providing locally appropriate outreach services, which may include assistance to families applying for health insurance through CHIP, publicizing to families with uninsured children the availability of children’s health insurance, and educating families about the value of health insurance.

(b) *Contractor’s understanding and commitment.*

CONTRACTOR represents and warrants that it has thoroughly reviewed, understands, and acknowledges HHSC’s objectives as represented in this contract and the associated RFP and will work diligently with HHSC to achieve the program objectives. CONTRACTOR represents and warrants that it has the skills, experiences, and resources necessary to perform the services described in this contract.

Section 1.03 Construction of Contract.

(a) *Scope.*

The provisions of [Section 1.01](#) and [Section 1.02](#) are intended to be a general introduction to this Contract and are not intended to expand the scope of the Parties’ obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed consistent with the provisions of this [Article 1](#).

(b) *Severability.*

If any provision of this Contract is construed to be illegal or invalid, such interpretation will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated herein, but all other provisions will remain in full force and effect.

(c) *Headings.*

The article and section headings in this Contract are for reference and convenience only and shall not be considered in the interpretation of this Contract.

Section 1.04 Legal authority.

HHSC is authorized to enter into this contract pursuant to [Section 531.039](#), Government Code. CONTRACTOR warrants that is authorized to enter into this contract pursuant to authorization granted by its governing board or officer. The person or persons signing and executing this Contract on behalf of HHSC, or representing themselves as signing and executing this Contract on behalf of HHSC, warrant and guarantee that he, she, or they have been duly authorized by HHSC to execute this Contract on behalf of HHSC and to validly and legally bind HHSC to all of its terms, performances, and provisions.

HHSC has designated a Project Manager for this Contract. The HHSC Project Manager has been duly authorized to validly and legally bind HHSC in connection with any commitments under this Contract, and CONTRACTOR may rely on his or her authority to give instructions and direction in fulfilling its duties under this Contract.

In consideration of the foregoing purposes and objectives, CONTRACTOR assures compliance with the following terms and conditions:

Article 2. General Terms and Conditions

Section 2.01 Term of the contract.

(a) Initial Term.

This Contract takes effect the day it is executed by HHSC following execution by CONTRACTOR (the “Effective Date”) and shall terminate January 31, 2002, unless it is extended, renewed in accordance with [Section 2.01\(b\)](#) of this Contract, or terminated sooner in accordance with [Article 6](#) of this Contract.

(b) Extension or renewal.

This Contract may be extended beyond the Initial Term or renewed following the completion of the Initial Term by mutual agreement. An extension or renewal of the Contract shall be preceded by written notice from HHSC to CONTRACTOR. In addition, an extension or renewal must be in writing, recite that it is executed pursuant to this Section 2.01 of the Contract, stipulate the duration of the extension or renewal, and specify any modifications to the duties of the Parties, including any changes in Deliverables or Services, contract pricing terms, or any other terms and conditions of this Contract.

Section 2.02 Contract elements.

The agreement between the Parties will consist of the following:

- (1) This Contract;
- (2) CONTRACTOR’s Proposal, which is attached as [Exhibit A](#) to this Contract;
- (3) Modifications to CONTRACTOR’s Proposal, attached in the document entitled, “CHIP CBO Contract Negotiation Tracking File,” as [Exhibit B](#) to this contract;
- (4) The RFP, which is attached as [Exhibit C](#) to this contract.

Section 2.03 Funding.

This Contract is expressly conditioned on the availability of State and Federal appropriated funds. CONTRACTOR has no right of action against HHSC in the event that HHSC is unable to fulfill its obligations under this Contract as a result of the suspension, termination, withdrawal, or failure of funding to HHSC or lack of sufficient funding of HHSC. If funds become unavailable, the contract termination provisions of Article 6 will apply.

Section 2.04 Amendments or modifications.

(a) No different or additional services, work, deliverables, or products shall be authorized or performed except pursuant to an amendment or modification of this Contract that is executed in compliance with this Article 2. No waiver of any term, covenant, or condition of this Contract shall be valid unless executed in compliance with this Article. CONTRACTOR shall not be entitled to payment for any services, work, or products which are not authorized by a properly executed Contract amendment or modification.

(b) No amendment to, or change, waiver, or discharge of, any provision of this Contract shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, change, waiver, or discharge is sought to be enforced.

Section 2.05 *Acceptance of proposal.*

CONTRACTOR expressly acknowledges that upon HHSC's acceptance of the Proposal submitted by CONTRACTOR and execution of this Contract, the terms and contents of the Proposal became binding contractual obligations of CONTRACTOR. Failure of CONTRACTOR to accept the obligations described in its Proposal shall entitle HHSC to cancel the award.

Section 2.06 *Independent contractor status; liability for employment-related charges and benefits.*

CONTRACTOR shall perform work under this Contract as an independent contractor and not as agent or representative of HHSC. CONTRACTOR is solely and exclusively liable for all taxes and employment-related charges incurred in connection with the performance of this Contract. HHSC will not be liable for State, local, or Federal excise taxes or for any employment-related charges or benefits of CONTRACTOR, such as workers compensation benefits, unemployment insurance and benefits, or fringe benefits.

Section 2.07 *Ownership of work product.*

(a) Any Deliverable and any and all work products of the CONTRACTOR that result from this Contract are the exclusive property of the State of Texas.

(b) CONTRACTOR may, with the permission of HHSC and at its own expense, retain a sufficient number of copies of the work product as may be required to fulfill the terms and conditions of this Contract and until such time as CONTRACTOR is released from further obligation by HHSC. Until such release, CONTRACTOR must treat all information and work products specifically identified by HHSC as proprietary and confidential and shall neither release nor share any such information or work product with any person or entity without the written consent of HHSC.

(c) If the work products resulting from this Contract contain any information or data that is the intellectual property of CONTRACTOR or another party that is or could be protected by Federal copyright or patent laws or Texas trade secret laws, CONTRACTOR shall grant or, as the case may be, obtain, a royalty-free, fully paid, nonexclusive and irrevocable license in favor of HHSC to copy, reproduce, prepare derivative works, deliver, publish, perform, dispose of, use and re-use, in whole or in part, and to authorize the others to do so, all of such work products provided to HHSC or produced under this Contract.

Section 2.08 *Governing law and venue.*

This Contract shall be governed by the laws of the State of Texas and interpreted in accordance with Texas law. Proper venue for litigation arising from this contract shall be in the District Courts of Travis County, Texas.

Section 2.09 *Project managers.*

Following execution of this Contract, HHSC and the CONTRACTOR shall each designate in writing a Project Manager for this contract. Notice of such designation must be delivered to the other Party within 15 business days following execution of this Contract. CONTRACTOR's Project Manager shall work directly with the HHSC Project Manager for purposes of coordination and delivery of the Services and Deliverables under this Contract. HHSC's Project Managers will be the regional CBO Coordinators employed by the TexCare Partnership.

Section 2.10 *HHSC Contract Manager.*

The Contract Manager for HHSC is responsible for ensuring compliance with the terms and conditions that govern the performance of this Contract. HHSC's contract manager is:

María "Cookie" Hascall
TexCare Partnership CHIP Marketing Director
P.O. Box 1506
Austin, Texas 78767-1506
Tel. # (512) 494-0061, ext. 236
Fax # (512) 494-0278

Section 2.11 Notice.

Any notices under this Contract shall be sent by registered or certified mail, return receipt requested, or shall be delivered by hand, and a receipt provided. Any notice under this Contract to HHSC shall be sufficient if hand delivered, or mailed to the Project Managers designated under [Section 2.09](#) of this Contract. A copy of any notice to CONTRACTOR under this Contract shall be delivered to the Project Manager at the address specified in the written notice of designation of Project Manager required under [Section 2.09](#). Either Party may change its designee or address upon five (5) days' written notice to the other Party.

Section 2.12 Assignment and delegation.

Absent the express written consent of HHSC, CONTRACTOR may not assign or delegate any right or duty under this Contract.

Section 2.13 Indemnification.

(a) CONTRACTOR shall indemnify and save harmless HHSC and its officers, agents, representatives, and employees, from and against any and all claims or losses for physical damage to state property or injury to persons resulting from the negligence or misconduct on the part of CONTRACTOR, its agents, employees or representatives. In the event of loss, damage or destruction of any property of HHSC due to the negligence or misconduct of CONTRACTOR, CONTRACTOR shall indemnify the agency incurring such loss, and pay to such party either the full cost of repair, reconstruction or replacement, at that party's election. Such cost shall be due and payable by CONTRACTOR to the agency incurring the loss within ten (10) calendar days after the date of CONTRACTOR's receipt from such agency of written notice of the amount due.

(b) HHSC and its employees, officers, agents, and representatives, can neither agree to hold CONTRACTOR harmless nor agree to indemnify CONTRACTOR, and any agreements, contracts or provisions to the contrary are void.

Section 2.14 Sovereign immunity.

The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by HHSC or the State of Texas of any immunities from suit or from liability that HHSC or the State of Texas may have under law.

Section 2.15 Force majeure.

(a) Except as otherwise provided, neither CONTRACTOR, nor HHSC shall be liable for any delay in, or failure of performance, of any requirement contained in this Contract caused by a force majeure event. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence or occurrence of a force majeure event or otherwise waive this right as a defense.

(b) For purposes of this Contract, a force majeure event is an event or the result of an event that renders performance of a contractual obligation impossible or impracticable and which could not have been anticipated or avoided by the Party whose performance is adversely affected. Examples of force majeure events generally recognized under law include an act of God or war, labor strikes, or civil unrest.

Section 2.16 Overtime compensation.

Unless approved by HHSC, none of the funds paid under this Contract may be used by CONTRACTOR to pay for overtime compensation of the CONTRACTOR's employees. CONTRACTOR is solely responsible for any obligations of overtime pay due its employees and may not assign such liability to HHSC.

Section 2.17 Subcontracting.

(a) HHSC will look solely to CONTRACTOR for accomplishment of the Services and/or Deliverables covered by this Contract. If CONTRACTOR subcontracts any of its duties under this Contract, the subcontractor(s) shall be bound by and must comply with all requirements of this Contract and CONTRACTOR shall not be relieved of any duty or responsibility under this Contract. HHSC may require CONTRACTOR to replace a subcontractor whose performance HHSC determines is substandard or unacceptable.

(b) CONTRACTOR must obtain the prior written approval of HHSC or its designee prior to entering into a subcontract that:

(1) Delegates a substantial portion of CONTRACTOR's responsibility under the approved project work plan;

(2) In the case of a contract with a value less than \$100,000, is in an amount greater than 25% of the amount payable to CONTRACTOR under this Contract; or

(3) In the case of a contract with a value greater than \$100,000, is in the amount of \$25,000 or higher.

(c) Neither the State of Texas nor HHSC shall incur any additional obligations from the use of subcontractors, nor shall the obligations of CONTRACTOR be reduced or diminished. CONTRACTOR agrees to indemnify and hold harmless HHSC from any claim asserted by or against CONTRACTOR's subcontractors. The Contractor will at all times be held liable, both individually and severally, for the performance of all obligations which may result from this Contract and shall not be relieved by the non-performance of any or all subcontractors.

Article 3. Assurances and Certifications

Section 3.01 Franchise taxes.

CONTRACTOR certifies by execution of this Contract and completion of the form attached to its proposal that its payment of Texas franchise taxes is current or, if CONTRACTOR is exempt from payment of franchise taxes, that it is not subject to the State of Texas franchise tax. A false statement regarding franchise tax status will be treated as a material breach of this Contract and may be grounds for termination at the option of HHSC. If franchise tax payments become delinquent during the Initial Term of the contract or during any extensions or renewals of the Contract, payments under this Contract will be withheld until CONTRACTOR's delinquent franchise tax is paid in full and certification of such payment is verified by the Comptroller of Public Accounts.

Section 3.02 Outstanding debts and judgments.

CONTRACTOR certifies that it is not presently indebted to the State of Texas, and that CONTRACTOR is not subject to an outstanding judgment in a suit by the State of Texas against CONTRACTOR for collection of the balance. For purposes of this section, an indebtedness is any amount sum of money that is due and owing to the State of Texas and is not currently under dispute. A false statement regarding CONTRACTOR's status will be treated as a material breach of this Contract and may be grounds for termination at the option of HHSC.

Section 3.03 *Certification regarding good faith effort.*

HHSC is committed to making a good faith effort to assist Historically Underutilized Businesses (HUBs) through the contract award process in a manner consistent with rules prescribed by the General Services Commission (GSC) at 1 T.A.C. 111.11 *et seq.* The GSC has established a goal of a minimum 33 percent (33%) HUB participation in all State services contracts, either through direct contracting or through prime or general Contractor's subcontracting efforts. HHSC is required to establish that the CONTRACTOR has complied with this good faith effort. CONTRACTOR has completed or shall complete required documentation of good faith effort on forms and in the manner prescribed by HHSC. Such documentation is attached to its Proposal. CONTRACTOR shall comply with continuing reporting requirements imposed by HHSC or the General Services Commission.

Section 3.04 *Child support certification.*

As required by Texas Family Code Section 231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% are not eligible to receive payments from State funds under a contract to provide property, materials, or services or receive a State-funded grant or loan. The Contractor agrees to comply with these provisions, and has certified that it is not ineligible to receive the payments specified in this Contract by executing the form entitled "Child Support Certification," which is attached to its Proposal.

Section 3.05 *Non-diversion of funding.*

CONTRACTOR warrants that the funds paid by HHSC under this Contract will not be used to supplant or replace other funding held by CONTRACTOR or revenue or income to which CONTRACTOR is entitled without the prior written approval of HHSC.

Article 4. Services and Deliverables

Section 4.01 *Statement of Services and Deliverables.*

CONTRACTOR shall provide the Services and Deliverable work products in accordance with CONTRACTOR's Proposal, attached to this Contract as [Exhibit A](#). Any clarifications, modifications, or additions to the Proposal are attached to this Contract as [Exhibit B](#).

Section 4.02 *Project staffing and resources.*

CONTRACTOR shall provide the project staffing and resources detailed consistent with the details of CONTRACTOR's Proposal.

Article 5. Terms and Conditions of Payment

Section 5.01 *Amount.*

(a) CONTRACTOR agrees to provide the Services and Deliverables described in [Article 4](#) of this contract in the amount of **\$35,376.00**. CONTRACTOR understands and expressly assumes all risks associated with the commitment of delivery of the contracted Services and Deliverables, including the failure, termination or suspension of funding to HHSC, delays or denials of required approvals, and cost overruns not reasonably attributable to HHSC.

(b) CONTRACTOR further agrees that the cost of the Services and Deliverables specified in this Section 5.01 represents the total cost to HHSC and the State of Texas for the contracted Services and Deliverables and that no

additional charges, fees, or costs shall be added to this amount or sought except for properly authorized and executed Amendments or Modifications.

Section 5.02 *Payment procedures.*

(a) CONTRACTOR will be paid for Services and/or Deliverables that are completed and accepted by the HHSC Project Manager in accordance with the approved project plan. Payment for such Services and/or Deliverables will be in accordance with the payment schedule described in paragraph (b) of this Section 5.02. Upon HHSC's request, the CONTRACTOR shall provide documentation to the degree of detail necessary to resolve any review, examination, inquiry, or audit HHSC or any other responsible authority.

(b) *Payment schedule.* Payment for completed and accepted Services and Deliverables shall be in accordance with the following schedule:

(1) The first payment to CONTRACTOR will be in an amount equal to 10% of the amount specified in [Section 5.01](#) of this Contract, and will be made no later than February 21, 2000; and

(2) The balance of the funds specified in [Section 5.01](#) of this Contract, less the amount paid in accordance with paragraph (b)(1) of this section, will be paid in 23 equal installments, each payment to occur no later than the first business day following the 10th day of each month commencing March 2000.

(3) HHSC's duty to pay the amount described in paragraph (b)(2) of this section is subject to offset of any amounts HHSC determines are owed to HHSC or to which there is a bona fide dispute regarding HHSC's duty to pay.

Section 5.03 *Expenses.*

All expenses (including travel and travel-related expenses) incurred by the CONTRACTOR in connection with its provision of the Services and/or Deliverables are the sole responsibility of CONTRACTOR.

Section 5.04 *Disputed fees.*

In the event HHSC disputes payment of all or any portion of an invoice from CONTRACTOR, HHSC shall notify CONTRACTOR of such dispute and both Parties shall attempt in good faith to resolve such dispute. HHSC shall not be required to pay any disputed portion of an invoice. Notwithstanding any such dispute, CONTRACTOR shall continue to perform the Services in compliance with the terms of this Contract pending resolution of such dispute.

Section 5.05 *Restriction on assignment of fees.*

During the term of the Contract CONTRACTOR may not, without the prior approval of HHSC, assign to a third party CONTRACTOR's interest in or right to receive any payments to be made by HHSC under this Contract.

Section 5.06 *Taxes.*

HHSC shall not be responsible in any way for the payment of any Federal, state or local taxes related to or incurred in connection with the Services or Deliverables or this Contract. CONTRACTOR shall pay and discharge any and all such taxes, including any penalties and interest.

Article 6. Tailored Remedies

Section 6.01 Understanding and expectations.

CONTRACTOR agrees and understands that HHSC may pursue administrative and legal remedies for both programmatic and financial noncompliance. HHSC, in its discretion, may impose or pursue one or more remedies for each item of noncompliance and will determine sanctions on a case-by-case basis. HHSC's pursuit or non-pursuit of a tailored administrative remedy shall not constitute a waiver of any other remedy that HHSC may have at law or equity.

Section 6.02 Non-material breach.

A non-material breach is any failure of the CONTRACTOR to provide Services or Deliverables, or portions of Services or Deliverables, which, in the determination of HHSC, are essential to achieving the program objectives as stated in [Article 1](#) of this Contract. In addition, the failure of the CONTRACTOR to be responsive to the reasonable requests of HHSC may be regarded by HHSC as a non-material breach.

Section 6.03 Remedies in the event of non-material breach.

(a) If HHSC determines that CONTRACTOR has committed a non-material breach of its duties under this Contract, HHSC will provide the CONTRACTOR written notice of such determination.

(b) CONTRACTOR must, within five (5) calendar days of receipt of written notice of a non-material breach, provide the HHSC Project Manager a written response that explains:

- (1) The reasons for the non-material breach;
- (2) CONTRACTOR's plan to address or cure the non-material breach; and
- (3) The date and time by which the non-material breach will be cured.

(c) CONTRACTOR's proposed cure of a non-material breach is subject to the approval of HHSC. Repeated failure of CONTRACTOR to cure non-material breaches in accordance with the corrective plan approved by HHSC may be regarded by HHSC as a material breach.

Section 6.04 Material Breach.

(a) A material breach is any default or deficiency in the performance of the Services or completion of the Deliverables which, in the determination of HHSC, substantially prevents the completion of a scheduled Service or Deliverable or materially frustrates the achievement of HHSC's objectives as stated in [Article 1](#) of this Contract.

(b) A delay or failure of HHSC or any other agency to provide information or materials that HHSC and CONTRACTOR mutually agree is necessary to the completion of any Service or Deliverable will not be deemed a material breach for purposes of this Article 6.

Section 6.05 Additional administrative remedies.

In the event the CONTRACTOR commits a material breach, HHSC may elect to impose the following remedies, alone or in combination:

- (a) Temporarily or permanently withhold disputed payments due under the Contract;
- (b) Require reasonable financial, progress, or other reports to be submitted by CONTRACTOR;

(c) Demand repayment of disputed sums paid under the Contract from the CONTRACTOR;
or

(d) Reduce the contract funding amount for failure to provide Services or Deliverables as set out in this Contract.

In the case of a material breach, HHSC may elect to terminate the contract for cause in accordance with [Section 6.06](#). HHSC will notify the CONTRACTOR in writing when a tailored remedy is imposed.

Section 6.06 Termination for cause.

(a) HHSC may, by giving written notice to the CONTRACTOR, terminate this Contract, in whole or in part, as of the date specified in the notice of termination if CONTRACTOR:

(1) Commits a material breach of this Contract that is not cured within ten (10) calendar days following written notice of breach from HHSC to CONTRACTOR;

(2) Commits a material breach that the CONTRACTOR demonstrates to the reasonable satisfaction of HHSC cannot be cured within ten (10) calendar days and fails either to

(A) Proceed promptly and diligently to correct the breach;

(B) Develop within ten (10) calendar days following written notice of breach from HHSC a complete plan for curing the breach; or

(C) Cure the breach within ten (10) calendar days' of written notice of the breach;

(3) Commits a material breach of this Contract that is not subject to cure with due diligence within fifteen (15) calendar days of written notice of the breach; or

(4) Contemporaneously commits numerous non-material breaches of its duties or obligations that, in HHSC's determination, collectively constitute a material breach of this Contract.

(b) If HHSC chooses to terminate this Contract in part, the charges payable under this Contract will be equitably adjusted to reflect those Services and Deliverables that are terminated.

Section 6.07 Termination for convenience.

HHSC may terminate this Contract for convenience and without cause to be effective by giving the CONTRACTOR at least one (1) week's prior written notice designating the termination date. If HHSC terminates this Contract pursuant to this section, HHSC shall pay the CONTRACTOR on the effective date of termination (or as soon as possible thereafter taking into account appropriation issues) any undisputed amounts due for all completed, approved, and accepted Services or Deliverables.

Section 6.08 Termination for non-appropriation of funds.

Notwithstanding any other provision of this Contract, if funds for the continued fulfillment of this Contract by HHSC are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then HHSC will have the right to terminate this Contract at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding. In such instance, unless otherwise agreed to by the Parties, this Contract will terminate and become null and void on the last day of the fiscal period for which appropriations were received.

Section 6.09 *Extension of termination effective date.*

HHSC may extend the effective date of termination one or more times as it elects, in its sole discretion, provided that the total of all such extensions shall not exceed ninety (90) calendar days following the original effective date of termination.

Section 6.10 *Dispute resolution.*

(a) *General agreement of the Parties.*

The Parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under this Agreement. The Parties express their mutual commitment to using all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in this Section 6.10.

(b) *Duty to negotiate in good faith.*

Any dispute that in the judgment of any Party to this Agreement may materially or substantially affect the performance of any Party will be reduced to writing and delivered to the other Party. The Parties must then negotiate in good faith and use every reasonable effort to resolve such dispute and the Parties shall not resort to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by agreement between the Parties shall be reduced to writing and delivered to all Parties within ten (10) business days.

(c) *Claims for breach of Agreement.*

(1) *General requirement.* As required by Chapter 2260, Government Code, a claim for breach of this Agreement by CONTRACTOR must be resolved in accordance with the dispute resolution process established by HHSC in accordance with Chapter 2260, Government Code.

(2) *Negotiation of claims.* A claim for breach of this Agreement by CONTRACTOR that the Parties cannot resolve in the ordinary course of business or through the use of all reasonable and informal means must be submitted to the negotiation process provided in Chapter 2260, subchapter B, Government Code.

(A) To initiate the process, CONTRACTOR must submit written notice in accordance with Section 2.11 of this Agreement that specifically states that CONTRACTOR invokes the provisions of Chapter 2260, subchapter B, Government Code.

(B) Compliance by the contractor with Chapter 2260, subchapter B, Government Code, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

(3) *Contested case proceedings.* The contested case process provided in Chapter 2260, subchapter C, Government Code, is CONTRACTOR's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by HHSC if the Parties are unable to resolve their disputes under subsection (c)(2) of this Section 6.10.

(A) Compliance with the contested case process provided in Chapter 2260, Subchapter C, Government Code, is a condition precedent to seeking consent to sue from the Texas Legislature under Chapter 107, Civil Practices & Remedies Code. Neither the execution of this Agreement by HHSC nor any other conduct of any representative of HHSC relating to this Agreement shall be considered a waiver of the State's sovereign immunity to suit.

(4) *HHSC rules.* The submission, processing and resolution of the CONTRACTOR's claim is governed by the rules to be adopted by HHSC pursuant to Chapter 2260, Government Code.

(A) CONTRACTOR expressly acknowledges that, as of the Effective Date of this Agreement, HHSC has not adopted rules to implement the requirements of Chapter 2260, Government Code. CONTRACTOR expressly waives any claim regarding the absence of any such rules at the Effective Date.

(5) *CONTRACTOR's duty to perform.* Neither the occurrence of an event constituting an alleged breach of contract nor the pending status of any claim for breach of contract is grounds for the suspension of performance, in whole or in part, by CONTRACTOR of any duty or obligation with respect to the Services under this Agreement.

Article 7. Reporting Requirements and Access to Information

Section 7.01 Progress reports.

(a) CONTRACTOR agrees to develop, periodically update and refine contract performance goals and measures and contract work plans, using the form entitled, "Work Plans and Performance Measures in CHIP Community-Based Outreach." The CONTRACTOR will make every good-faith effort to achieve set goals, and follow work plan activities. The CONTRACTOR agrees to make reasonable modifications in work plans should it be necessary to improve the effectiveness of work plan strategies. The CONTRACTOR'S first modification to work plans and performance measures is attached as Exhibit D.

(b) CONTRACTOR agrees to submit semi-monthly (i.e., every other month) progress reports by the first business day of the month, commencing May 2000, that describe its progress in completion or delivery of Services as requested by HHSC. Such reports must be submitted to the individual or office specified by HHSC in writing. HHSC or its delegated agent will review each such report or data and may request revisions of the same.

Section 7.02 Record retention and audit.

CONTRACTOR agrees to maintain and make available at reasonable times and for reasonable periods all books, records, and supporting documents kept current by CONTRACTOR pertaining to this Contract, and for three years following completion of this contract, for purposes of inspecting, monitoring, auditing, or evaluation by HHSC, a State or Federal law enforcement agency, an agency or entity designated by HHSC, or their representatives upon written request or notification from HHSC.

Article 8. Miscellaneous Provisions

Section 8.01 Consents, approvals and requests.

Unless otherwise specified in this Contract, all consents and approvals, acceptances, or similar actions to be given by either party under this Contract shall not be unreasonably withheld or delayed and each party shall make only reasonable requests under this Contract.

Section 8.02 Confidentiality.

(a) CONTRACTOR and all subcontractors under this Contract shall treat all information which is obtained through performance under this Contract as confidential information to the extent that confidential treatment is provided under law and regulations, and shall not use any information so obtained in any manner except as necessary to the proper discharge of obligations and securing of rights hereunder.

(b) CONTRACTOR will have a system in effect to protect all records and all other documents deemed confidential by law which are maintained in connection with the activities funded under this Agreement. Any disclosure or transfer of confidential information by CONTRACTOR, including information required by HHSC, will be in accordance with applicable law.

(c) In addition to the requirements expressly stated in this Article 11, CONTRACTOR will comply with any policy, rule, or reasonable requirement of HHSC that relates to the safeguarding or disclosure of information relating to CHIP members, CONTRACTOR's operations, or the Services performed by CONTRACTOR under this Contract.

Section 8.03 Publicity.

CONTRACTOR shall not use the name of HHSC, the State of Texas, or refer to HHSC or any such agency directly or indirectly in any media release, public announcement, or public disclosure that is not required as part of the Services to be performed under this Contract without the prior approval of HHSC, including, but not limited to, in any promotional or marketing materials, customer lists, or business presentations without obtaining the express, written, prior consent of HHSC for each such use or release.

Section 8.04 Entire agreement.

This Contract and each of the documents and inducements that are incorporated by reference into this Contract, represents the entire agreement between the Parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the Parties relative to such subject matter.

IN WITNESS HEREOF, HHSC and CONTRACTOR have each caused this Contract to be signed and delivered by its duly authorized representative.

La Esperanza Clinic

Health & Human Services Commission

By: _____
Teri Scott Rogers
Executive Director

By: _____
Don A. Gilbert
Commissioner

Date: _____

Date: _____

Exhibit A

CONTRACTOR's Proposal

Exhibit B

CHIP CBO Contract Negotiation Tracking File

Exhibit C

Health & Human Services Commission Children's Health Insurance Program Request for Proposals for Community-based Organization (CBO) Outreach Services

Exhibit D

Work Plans and Performance Measures in CHIP Community-based Outreach